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ABSTRACT

This paper describes ways in which the public school district can cut costs, similar to those utilized by the private sector in a shrinking economy. One strategy is to generate new revenue and protect old revenue from erosion through "ad valorem" taxation of real property. Between appraisal years, schools districts can actively seek out undervalued commercial property and challenge its valuation and thereby obtain additional operating revenue. This process, under way in Cleveland, Ohio, annually nets the Cleveland School District about one to two million dollars in new revenue. A second cost-cutting strategy is to make legal challenges to state funding of education. This approach bypasses the need for voter approval, but involves time, expense, and conflict with the state legislature. The third strategy is to treat gas and electricity (utilities) as commodities. In its contract with the Public Utility Commission of Ohio (PUCO), the Cleveland School District pays 21 percent less for electricity. Appendices contain a copy of one of two complaints challenging the funding of public education in Ohio and a copy of the complaint before PUCO. (LMI)

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The Changing Role of the School Attorney: Protecting and Exploiting Sources of Revenue for Schools

ED 374 531

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by
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I. The Economy and the Public School District

The shrinking economy has caused belt tightening in both the private and the public sectors of the American economy. Downsizing, right sizing, economizing, getting out the fat, cleaning house, cost cutting, staff reductions, discontented staff, labor unrest, shabby buildings, lack of equipment, shortage of materials, and unfavorable results, or products are words that typify economies that are in trouble. They are not in the lexicon of a healthy growing economy. Both the private sector and the public sector face the challenge to survive as the American economy slows to a crawl.

The private sector is finding every way possible to cut cost. To the extent permitted by law, real property tax values are being challenged by corporations and other cost saving measures are being invoked to improve the corporate bottom line.

As schools strive to economize, they may overlook the public utilities that supply gas and electric energy. Yet they may have a significant impact on the budget -- sometimes 3 to 5%. Only very recently have some schools started doing what large industry has been doing for years - treating their utilities as commodities. Gas is bought from the lowest priced supplier and electricity is purchased through negotiated contracts or specially developed tariffs.

II Generating new Revenue and protecting old revenue from erosion.

Ad valorem taxation of real property is the basis for generating revenues for many school systems. The assessment of real property taxes occurs subsequent to a valuation process. State law may require a reappraisal every three or four years This process, by what ever name called, generally permits for an appeal of the issue of value. We can call these actions decrease complaints. The appeal may start before an administrative body such as a Board of Revision, then go to the courts or perhaps to another administrative step (in Ohio, the Board of Tax Appeals) before reaching a court of last resort.

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Property owners have a right to challenge the valuation of their property at times specified by statute, generally, once a year. This "change" in valuation may be based on a number of factors such as the decrease in the number of tenants in a commercial building or the inability of a steel mill to sell iron produced in an outmoded and economically unproductive blast furnace. This can produce some very real savings to large commercial property owners. For example a 10% reduction in the value of a ten million dollar building that may be taxed at a rate of 4% is worth $40,000.00 per year. Assuming that the reduction remains unchanged until the next reappraisal year, that reduction may be worth $160,000 or more to the property owner. There are plenty of lawyers and real property appraisers who are willing to help a commercial or industrial property owner achieve this kind of savings at the expense of a school district.

Successful decrease complaints will affect the revenue of school districts. It is money taken directly from the school's budget. Challenge decrease complaints through the appeals process when the amount of the decrease will affect the district's budget. Lawyers can pay their own way in this process of protecting the revenue of the school district. Avoid challenging homeowners seeking a decrease. They are politically strong and the amounts in question do not warrant the time spent in pursuing them.

School districts can increase their revenues without raising taxes by insuring that all property is valued and thus assessed at a fair rate. Thus, between appraisal years, school districts can actively seek out undervalued commercial property and attempt to challenge its valuation and thereby obtain additional operating revenue for the school district. This process in Cleveland, Ohio annually nets the Cleveland School District about one to two million dollars in new revenue. The same cautions that apply to decrease complaints should also apply to increase complaints -- do not seek increases against residential property nor for commercial or industrial property whose additional revenue will not exceed, by a fair margin, the cost of obtaining the increase.

Specialists can best handle this type of legal work. A large volume of cases makes the cost per case reasonable (Cleveland has from 350-600 cases pending at any one time). The use of an expert appraiser is essential to obtain good results. Expect strong opposition to this type of program from the building owners and their lobbyists. If your school district is supported by taxes on personal property, consider challenging those values as well. (How much is that blast furnace really worth?).

III Legal challenges to State funding of education

If your state is one of the few that has not jumped on the bandwagon of mounting a legal challenge to the manner in which public education is funded, then you should assess this course of obtain additional revenue for your district. The

advantage of this approach is the lack of the need for voter approval. The disadvantages of this approach are the time, expense, and the State Legislature, which has probably been ducking this issue all along, and now must find a solution while under court order. Exhibit 1, is one of two complaints challenging the funding of public education in Ohio presently pending before the courts there.

IV Gas and electricity are commodities -- treat them as such

Cutting operating costs can have the same effect on the bottom line as raising revenues. Schools often overlook cutting the cost of utilities Energy conservation programs are one approach. What we are recommending is paying less for the energy consumed. Large industrial consumers use this approach, treating utilities as commodities.

Natural gas is one of the first utilities to have gone through extensive deregulation. Numerous retailers will help you piece together a gas purchase program that will supplement or completely replace your natural gas utility's supply. "Self-help" gas or "transmission" gas, as it is sometimes referred to may be purchased through a supplier by a contract based on historic usage's. Interstate pipelines transmit the gas to the local gas company in the same manner as the gas purchased by the local company for its own use. Your local gas company then distributes the purchased gas to you through their pipe lines. Local service is provided by the local gas company.

Important considerations in choosing to use transmission gas are: the reliability of the supplier; the availability of back-up gas; and the possibility of interruption of gas service as a trade off for low price. Consider getting advice from members of the business community who buy gas on a regular basis. The use of a knowledgeable utilities attorney is essential in preparing any utilities contract.

Electricity, unlike gas, is a much more regulated utility. The process for establishing electric utility rates, or tariffs, is designed to generate a reasonable rate of return for the utilities investors. The first stage establishes the amount of money needed for the utility to operate. Next, the utility's anticipated revenue is apportioned among the various categories of customers. These rates are set forth in published tariffs that determine what individual customers will pay for the electricity used. Tariff rates are designed for broad categories of customers. Often individual customers may vary so greatly from their class norm that the utility provides special rate contracts to them. The large electric furnace of a steel mill is so far beyond the requirements of a "large commercial user" that a utility will write a special contract to cover their special needs.

Anthony Yankel of Yankel and Associates. a Bay Village, Ohio consulting engineer, helped the Cleveland City School District differentiate itself from other members of the class "large commercial users." As a result of his work and a rate

case I filed with the Public Utility Commission of Ohio, the Cleveland Public Schools pay 21% less for their electricity. This is worth over a million dollars per year in savings for the Cleveland Public Schools. The agreement between the Cleveland Electric Illuminating Company and the Cleveland Public Schools is set forth in a special contract. The contract was obtained after a hearing before the Public Utility Commission, but it was a negotiated agreement. Exhibit 2 is a copy of the Complaint before the PUCO.

The Cleveland contract was, we believe, the first such public school contract in the country. As Electric power is further deregulated more such contracts are likely to become available. Schools can obtain special contracts at this time provided that they can differentiate themselves from the others in their class of customer service. In the alternative they can seek, through the filing of a complaint before their state regulatory agency, a reduced tarriff for all in their class.

V. Pitfalls of gas and electric utility contracts

Utilities have entrenched themselves in the fabric of the community they serve. Employees of public utilities are on advisory boards, parent support groups, school community partnerships, and even the boards of education themselves. When they do not sit on a board, they have probably contributed to the election campaign of those who do. In short they are a powerful political adversary for those seeking to effect their rate structures.

If the gas or alternative electric supply fails, for whatever reason, the administrator and board who authorized the change from the traditional utility service (ignoring the fact that these utilities themselves often fail) may be charged with that failure.

If the utility contract commits the school to the purchase of energy and there is a dramatic reversal of energy costs at the public utility the contract may prove more costly than remaining with the public utility.

VI. Utilities in the near future -- Where are we going?

The State and Federal governments continue to deregulate both the electric and gas utilities so that more options are becoming available to the consumer. It appears that in the near future a school in Alabama may be able to choose between a variety of suppliers for its electrical as well as its gas services. That school may be heated with gas from Texas and lighted by power it buys from the Niagara Power Authority. As the consumer who must now chose between competing telephone manufacturers for the best equipment buys, the buyer of utilities in the future will need to be guided by skilled professionals.

VII. Appendix

1 Complaint on state funding of Ohio's public schools

2 Complaint Before the PUCO

TCS

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JEANETTE HOWARD, PARENT
AND NEXT FRIEND OF
ANTHONY HOWARD, A MINOR
16804 WOODBURY
CLEVELAND, OHIO 44135,

and

JIMMIE WILLIAMS, II AND
ROBIN WILLIAMS, PARENTS
AND NEXT FRIENDS OF
JIMMIE WILLIAMS, III,
TERRENCE WILLIAMS,
MELISSA WILLIAMS,
JOSHUA WILLIAMS, AND
AMY WILLIAMS, MINORS,
2769 EAST 126TH STREET
CLEVELAND, OHIO 44120

and

BOARD OF EDUCATION OF THE
CLEVELAND CITY SCHOOL DISTRICT
1380 EAST SIXTH STREET
CLEVELAND, OHIO 44114,

and

JAMES M. CARNEY, JR., PRESIDENT
OF THE BOARD OF EDUCATION
OF THE CLEVELAND CITY
SCHOOL DISTRICT, AND
INDIVIDUALLY
1380 EAST SIXTH STREET
CLEVELAND, OHIO 44114,

and

STANLEY E. TOLLIVER, VICE-PRESIDENT
OF THE BOARD OF EDUCATION
OF THE CLEVELAND CITY
SCHOOL DISTRICT, AND
INDIVIDUALLY
1380 EAST SIXTH STREET
CLEVELAND, OHIO 44114,

CASE NO. 203262

JUDGE DANIEL O. CORRIGAN

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND OTHER EQUITABLE RELIEF

Filed
[illegible]

ex. 1

FRANK J. HUML, SUPERINTENDENT
OF THE CLEVELAND CITY
SCHOOL DISTRICT
1380 EAST SIXTH STREET
CLEVELAND, OHIO 44114,

and

PAUL YACOBIAN, TREASURER
OF THE CLEVELAND CITY
SCHOOL DISTRICT
1380 EAST SIXTH STREET
CLEVELAND, OHIO 44114,

and

DR. WANDA JEAN GREEN
1 BRATENAHL PLACE
BRATENAHL, OHIO 44108,

and

ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

On behalf of themselves and as representative parties on behalf of all similarly situated school districts in Ohio, the members of the boards of education for such school districts, all administrators employed by such school districts, the students who reside therein and attend public elementary and secondary schools operated by such school districts, the parents of such students, and the owners of real property situated in such school districts.

vs.

FRANKLIN B. WALTER, SUPERINTENDENT
OF PUBLIC INSTRUCTION
STATE OF OHIO
808 OHIO DEPARTMENTS BUILDING
65 SOUTH FRONT STREET
COLUMBUS, OHIO 43266-0308,

OHIO STATE BOARD OF EDUCATION)
65 SOUTH FRONT STREET)
COLUMBUS, OHIO 43266-0308,)
)
and)
)
OHIO DEPARTMENT OF EDUCATION)
65 SOUTH FRONT STREET)
COLUMBUS, OHIO 43266-0308,)
)
and)
)
OHIO CONTROLLING BOARD)
30 EAST BROAD STREET, 32ND FLOOR)
COLUMBUS, OHIO 43215,)
)
and)
)
GEORGE V. VOINOVICH, GOVERNOR)
STATE OF OHIO)
RIFFE CENTER, 30TH FLOOR)
77 SOUTH HIGH STREET)
COLUMBUS, OHIO 43266-0601)
)
and)
)
LEE I. FISHER)
ATTORNEY GENERAL OF OHIO)
STATE OFFICE TOWER, 17TH FLOOR)
30 EAST BROAD STREET)
COLUMBUS, OHIO 43266-0410,)
)
and)
)
ROGER W. TRACY,)
TAX COMMISSIONER OF OHIO)
STATE OFFICE TOWER, 22ND FLOOR)
30 EAST BROAD STREET)
COLUMBUS, OHIO 43215)
)
and)
)
STATE OF OHIO)
C/O ATTORNEY GENERAL OF OHIO)
STATE OFFICE TOWER, 17TH FLOOR)
30 EAST BROAD STREET)
COLUMBUS, OHIO 43266-0410,)
)
Defendants.)

NATURE OF ACTION

This is a class action brought pursuant to Rules 23(A) and (B)(2) of the Ohio Rules of Civil Procedure. The action seeks a Declaratory Judgment, authorized by Civ. R. 57 and R.C. 2721.01 to 2721.15 that Ohio's statutory system providing for the financing of public schools is unconstitutional because it violates the following provisions of the Ohio Constitution: thorough and efficient clause of Article VI, Section 2; the state financial support clause of Article VI, Section 3; the equal protection and benefit clause of Article I, Section 2; and the uniform operation of laws clause of Article II, Section 26.

CLASS ACTION ALLEGATIONS

Plaintiffs bring this action on their own behalf and on behalf of all similarly situated school districts in Ohio, all of the members of the boards of education for such similarly situated school districts, all of the administrators employed by such similarly situated school districts, all of the students and their parents who reside and attend such similarly situated school districts and all of the owners of real property which are located in such similarly situated school districts.

The classes which are similarly situated are so numerous that joinder of all members is impractical. There exists questions of law and fact which are common to each of the classes and its members. The claims asserted in this action by the representative parties are typical of the claims of the class and the representative parties will fairly and adequately protect the

interests of each of the classes and it members. The adjudication of the issues raised in this action will be dispositive of the interests of each class and its members, even though they are not parties to this action. The defendants have acted or refused to act on grounds applicable to the class thereby making appropriate declaratory relief with respect to the class as a whole.

PLAINTIFF

1. Plaintiff, JEANETTE HOWARD, is a resident of the Cleveland School District and is the parent of ANTHONY HOWARD, a minor and student in the Cleveland School District.

2. Plaintiffs, JIMMIE WILLIAMS, II AND ROBIN WILLIAMS, are residents of the Cleveland City School District and are the parents of JIMMIE WILLIAM, III, TERRENCE WILLIAMS, MELISSA WILLIAMS, JOSHUA WILLIAMS and AMY WILLIAMS, minors and students in the Cleveland School District.

3. Plaintiff, the BOARD OF EDUCATION OF THE CLEVELAND CITY SCHOOL DISTRICT ("Cleveland Board of Education"), is a Board of Education organized and existing under and by virtue of the laws of the State of Ohio, including Title 33 of the Ohio Revised Code, and is charged under R.C. 3313.47 with the responsibility of establishing, operating, managing and controlling the public schools within its district.

4. Plaintiff, JAMES M. CARNEY, JR., is the duly qualified, elected and acting President of the Cleveland Board of Education and a resident and taxpayer in the Cleveland School District.

5. Plaintiff, STANLEY E. TOLLIVER, is the duly qualified, elected and acting Vice-President of the Cleveland Board of Education and a resident and taxpayer in the Cleveland School District.

6. Plaintiff, FRANK J. HUML, is the qualified, appointed and acting Superintendent of the Cleveland School District and is the person responsible for carrying out the policies of the Board administering all aspects of the operations of the District.

7. Plaintiff, PAUL YACOBIAN, is the qualified, appointed and acting Treasurer of the Cleveland School District and is the chief financial officer of the District.

8. Plaintiff, DR. WANDA JEAN GREEN, is a resident of Bratenahl, a village located within the Cleveland School District, who owns real property within the District and pays real estate taxes.

DEFENDANTS

9. Defendant, FRANKLIN B. WALTER, is the Superintendent of Public Instruction of the State of Ohio, appointed pursuant to R.C. 3301.08 and under R.C. 3317.01, and is charged with the responsibility of calculating the amount of state aid payable to each school district throughout Ohio.

10. Defendant, OHIO STATE BOARD OF EDUCATION, is created pursuant to R.C. 3301.13, and pursuant to R.C. Chapter 3317.01, is charged with the responsibility of administering the School Foundation Program.

11. Defendant, OHIO DEPARTMENT OF EDUCATION, is created pursuant to R.C. 3301.13, and pursuant to R.C. Chapter 3317, is

charged with the responsibility of the administering the School Foundation Program.

12. Defendant, OHIO CONTROLLING BOARD, is created pursuant to R.C. Chapter 3317.01, and is charged with the responsibility of approving the administration of the School Foundation Program by the State Board of Education.

13. Defendant, GEORGE V. VOINOVICH, is the duly elected, qualified and acting Governor of the State of Ohio and the Chief Executive Officer of the State and is charged with the responsibility of managing and directing the operations of the State, including funding for public primary and secondary education.

14. Defendant, LEE I. FISHER, is the acting Attorney General of Ohio and the chief law officer of the State and a party to the proceedings pursuant to R.C. 2721.12.

15. Defendant, ROGER W. TRACY, is the appointed and acting Tax Commissioner and is charged under Ohio law to supervise and correct real property assessments in the various counties of the State and other duties in respect to the financing of public education.

16. Defendant, STATE OF OHIO, through the General Assembly, is charged under the Ohio Constitution with the responsibility of establishing a thorough and efficient public school system that provides an equal educational opportunity to the students throughout the State and of financing the system in a manner consistent with the Ohio Constitution.

ALLEGATIONS COMMON TO ALL COUNTS

Constitutional Provisions

17. Article VI, Section 2 of the Ohio Constitution provides that "the general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State . . ."

18. Article VII, Section 2 of the Ohio Constitution provides that "Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds . . ."

19. Article I, Section 2 of the Ohio Constitution provides that "All political power is inherent in the people. Government is instituted for their equal protection and benefit."

20. Article II, Section 26 of the Ohio Constitution provides that "All laws, of a general nature, shall have a uniform operation throughout the State."

21. Article XII, Section 2 of the Ohio Constitution provides that: "No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation."

22. The State has the duty to establish a thorough and efficient educational system that provides equal educational

opportunity to all children in the State and the continuing duty to provide sufficient funds to accomplish these ends.

Reliance on Property Tax Base

23. The State of Ohio has established a scheme for financing public schools throughout Ohio relying on various sources of federal, state and local revenue. A main support for educational services is based on local funds generated by ad valorem taxes levied on real and personal property located within the various districts.

24. R.C. Chapter 3317, places upon each school district the obligation to raise a substantial portion of the total required revenues from sources within its district.

25. The amount and value of real and personal property varies widely among the school districts of the State.

26. The amount and value of real and personal property bear no real or rationale relationship to the number of students within a school district or the financial needs of a school district.

27. The amount of revenue generated per mill of taxing effort varies widely among the school districts of the State.

28. On a per pupil basis, the amount of combined local, state and federal funds for education varies widely among the school districts of the State.

Exemptions

29. Despite a significant reliance on ad valorem real property taxes, the State, through various statutes enacted at

various times, has authorized exemption from taxes for certain real and personal property, depending upon the ownership and use of the property, including exemption for property owned by the State, and its political subdivisions, charitable organizations, churches, and municipal utility works.

30. The reduction of the local tax base caused by such exemptions varies greatly among the school districts and has resulted in a substantial reduction of revenue otherwise available to school districts that contributes to inequitable funding among the various districts and leads to a state of continual financial crisis as alleged in this Complaint.

31. The State, through various statutes enacted at various times, has authorized the legislative authority of cities, counties and townships to exempt real and personal property taxes for certain qualified owners used for the purpose of economic development of the State. Such programs, among others, include Urban Jobs and Enterprise Zones, Community Reinvestment Areas, and Impacted Cities Programs.

32. The reduction of the local tax base caused by such exemptions varies greatly among the school districts and has resulted in a substantial and disproportionate reduction of revenue of certain districts otherwise available to school districts and contributes to inequitable funding among the various districts and leads to a state of continuing financial crisis as alleged in this Complaint.

33. The State, by the enactment of R.C. 5713.30, et seq., has authorized certain qualifying lands to be assessed and taxed in accordance with its value as used for agricultural purposes

rather than at its true value in money, as required by Section 2, Article XII of the Ohio Constitution. Agricultural use valuation results in values lower than fair market valuation.

34. The State by the enactment of R.C. 5713.22, et seq., has authorized the Chief of the Division of Forestry to declare certain land to be forest land and thereby be taxed at fifty percent of the local tax rate.

35. The reduction of the local tax base caused by agricultural use valuation and forest land designation varies greatly among the school districts and reduces the revenue otherwise available to school districts and contributes to inequitable funding among the various districts and leads to a state of continuing financial crisis as alleged in this Complaint.

Tax Increment Financing

36. The State, by the enactment of Chapter 725, of the Ohio Revised Code, has authorized the legislative authority of municipalities to issue Tax Increment Financing bonds for purposes of land acquisition, site development costs and other similar purposes. Principal and interest on such bonds are met by exempting real property taxes on a qualified project and requiring the developer of such project to make payment in lieu of taxes to the municipality.

37. The reduction of local tax revenue to the school districts by such exemptions varies greatly among the school districts and reduces the revenue otherwise available to effected school districts and has resulted in and contributes to a state

of continuing financial crisis and to inequitable funding among the various districts as alleged in this Complaint.

Undervaluation

38. The State, by the enactment of R.C. 5715.24 has required the Tax Commissioner in the first and fourth year of the reappraisal cycle of each county to determine whether the value of real property has been correctly determined by the respective Auditor of such counties.

39. The Tax Commissioner is required to order the aggregate value of the real property of any class to be increased by a percent that will cause such property to be correctly valued and assessed if he finds the property undervalued.

40. The Tax Commissioner regularly obtains information and data to perform studies of sales assessment ratio of various classes of property to determine whether real property has been correctly valued by the various Auditors.

41. Real property abstracts submitted by various Auditors throughout the State regularly and systematically reflect values that are ten to fifteen percent below fair market value as reflected by sales/assessment ratio studies of the Tax Commissioner.

42. The practice of the Tax Commissioner to approve abstract that reflect substantial undervaluation fails to comply with the requirements of law and result in a reduction in the local tax base and the revenue generated per mill against such tax base which contributes to the state of continuing financial crisis as alleged in this Complaint.

920 Credit

43. The State, by the enactment of R.C. 319.301, et seq., has authorized the Ohio Tax Commissioner to compute credit factors which are applied annually to each operating levy of all school districts within the State. This credit is commonly known as the 920 credit

44. The effect of the 920 Credit is to limit the operating tax levies of school districts in any year to the same number of dollars as the previous year, not withstanding an increase in the fair market value of the property in the district.

45. The 920 Credit unfairly and discriminatorily decreases the revenue of the school districts since the 920 Credit applies to voted operating levies, which comprise the bulk of the school district levies, but does not apply to charter levies, inside millage or debt levies of other taxing authorities which derive revenue from the same tax base.

46. The impact of the 920 Credit varies greatly among the school district and has resulted in setting a limit on local revenue unless the voters of the district approve new levies at elections held for that purpose. The 920 Credit has resulted in substantial and disproportionate reduction of revenue of the various districts and contributes to inequitable funding among the various districts and leads to a state of continuing financial crisis as alleged in this Complaint.

47. The limitation on the school districts throughout the State to raise local revenue due to the exemptions, abatements and credits as alleged above results in insufficient local funds to provide a thorough and efficient system of common schools.

Personal Property Tax

48. The State, by the enactment of R.C. 5711.22(C) has reduced the assessment level of personal property used in business from 35% to 27% in 1991 and has authorized the reduction of the assessment level to 25% by 1993.

49. The reduction of the local tax base caused by such reductions in assessment rates varies greatly among the school districts and has resulted in a reduction of revenue otherwise available to school districts and contributes to a state of continuing financial crisis and inequitable funding among the various districts as alleged in this Complaint.

Capital Improvements

50. The State has required the school districts to pay the costs for building and facilities repair, capital improvements, and new construction from revenue generated by ad valorem property taxes through levies voted for that purpose.

51. The physical condition, age, utility, efficiency and adequacy of the facilities used for educational services vary widely among the districts.

52. The amount and value of taxable property within the districts varies widely, does not bear a real or rationale relationship to the needs and requirements of the district for such purposes and is burdened by tax levies of competing, overlapping taxing authorities.

53. School districts are unable to generate sufficient voted millage to meet both the educational needs and also the requirements of the physical plant, including removal or

encapsulation of asbestos materials and modifications for the handicapped which are required by federal and state laws.

54. The constriction of the tax base by State authorized exemptions, abatements and credits as alleged above, combined with the overburdening of that base by levies of overlapping taxing authorities results in insufficient funds to provide a safe and adequate environment for the educational process.

Collective Bargaining

55. The State, by the enactment of R.C. 4117.01, et seq., has authorized public employees, including employees of school districts throughout the State of Ohio, to form employee organization for purposes of collective bargaining on wages, hours, terms and conditions of employment. School districts are required to bargain with such employee groups.

56. Bargaining units of school district employees have been and are forming in many districts in the State and have and are entering into collective bargaining agreements.

57. The existence of these agreements and the interpretation and enforcement of the duties imposed on school boards and superintendents have resulted in a substantial increase in personnel costs for salary and benefits.

58. In addition the management of the district and the implementation of innovative programs to improve delivery of educational services, to increase efficiency and to reduce costs are severely handicapped and delayed by the requirement of collective bargaining.

59. The requirements of R.C. 4117.01, et seq., have a substantial impact on the cost of salaries for educational and support services and have increased the cost of administration and supervision. The State has failed to adjust its financing formula to account for these types of costs that vary greatly among the districts.

School District Income Tax

60. Pursuant to R.C. 5748.01, et seq., the State has authorized a board of education to declare the necessity to raise additional funds by proposing a school district income tax.

61. A school district income tax may be imposed on the qualifying income of individuals who reside within the school district and on estates but not on the income of business entities, and not on the income of those who work within the school district but live outside the district.

62. The school district income tax narrows the local tax base, shifts the educational burden to the individual taxpayer and away from the commercial and industrial sectors and contributes to the disparity between the wealthy and poorer districts in the ability to raise local revenue.

Foundation Formula

63. Recognizing the inherent inequality of reliance on property tax base, the Ohio General Assembly has enacted R.C. Chapter 3317, which allocates state funds to the various districts to be used for the establishment, operation, management and control of public schools throughout Ohio.

64. State funds received by the Cleveland Board of Education are controlled and allocated by the State Defendants.

65. R.C. 3317.022, provides: "The department of education shall compute and distribute state aid to each school district for each fiscal year in accordance with the following formula... [(school district equalization factor (R.C. 3317.02) X the formula amount ($2,360)) X ADM (R.C. 3317.03)] - (.02 X total taxable value)"

66. Pursuant to R.C. 3317.023 and R.C. 3717.024, various adjustments are made to the state aid paid to each school district as calculated pursuant to the formula set forth in R.C. 3317.022.

67. R.C. Chapter 3317, fails to adequately consider numerous cost differentials throughout the State of Ohio which impact upon the school districts and therefore the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

68. R.C. Chapter 3317, fails to adequately consider the extra costs which urban school districts incur as a result of characteristics which are unique to urban surroundings and therefore, the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

69. The funding of public primary and secondary education in the State fails to equalize categorical programs and therefore the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

70. The State mandates that the various districts meet the individual educational and special needs of all of the students in its district. R.C. Chapter 3317 fails to adequately compensate school districts for the increased costs associated with educating children with special needs or disabilities and therefore, the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

71. The State continues to place additional curriculum, staffing and special instructional requirements upon the local school districts such as drug education, computer instruction, vocational training, industrial arts and other programs. Compliance with these enhanced standards require additional expenditure by the local school district for staff, equipment and space. The ability of local districts to raise local revenue varies widely among the districts and the State has failed to increase aid to compensate the local school districts for these increased costs. The State therefore does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

72. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. Chapter 3317, have corrected the vast disparities among the various districts in the total regular instructional expenditures per student and therefore, the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

73. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. Chapter 3317, have corrected the

vast disparities among the various districts in the total extracurricular expenditures per student and therefore, the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

74. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. Chapter 3317, have corrected the vast disparities among the various districts in the total local expenditures per student and therefore, the State does not provide an equal educational opportunity or a thorough and efficient system of common schools throughout Ohio.

75. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. Chapter 3317, have corrected the vast disparities among the various districts in the ratio of local expenditures to assessed value of property.

76. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. 3317, have corrected the vast disparities among the various districts in beginning teacher salary and in the average teacher salary.

77. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. Chapter 3317, have corrected the vast disparities among the various districts in the quantity and quality of library services, audio/visual equipment, laboratory equipment, extra curricular programs, enrichment programs and the like.

78. Neither the amount of State funds nor the allocation of such funds, have corrected the vast disparities among the various districts in the graduation rates and dropout rates of students.

79. Neither the amount of State funds nor the allocation of such funds, pursuant to R.C. Chapter 3317, have corrected the vast disparities throughout Ohio in the local operating millage.

80. The statutory financing scheme for public primary and secondary education in the State fails to take into account income wealth disparity among the various districts which directly affects the ability of a school district to raise local revenue through voted levies.

81. The statutory financing scheme for public primary and secondary education in the State maintains and expands inequality by guaranteeing State funds to wealthier districts.

82. The amount of State funds per pupil for public primary and secondary education is inadequate and has not increased at the same rate as necessary expenditures have increased.

83. The failure of the State to adequately fund and properly allocate funds for educational purposes as required by law adversely influences the content of curriculum and programs offered by poorer districts and also by districts with a high proportion of children with special or remedial educational needs.

84. The failure of the State to adequately fund and properly allocate funds for educational purposes as required by law results in the inability of districts with large numbers of students requiring remedial services to prepare these students for successful proficiency testing and placement in post-secondary education institutions.

85. The failure of the State to adequately fund and properly allocate funds for educational purposes as required by

law adversely affects the performance of students in under-funded districts and districts with a high proportion of children with special or remedial educational needs.

COUNT ONE

86. Plaintiff restates and realleges all that is stated and alleged in Paragraphs 1 through 85 of this Complaint and incorporates herein said Paragraphs as if fully restated.

87. The funding of public primary and secondary education in the State of Ohio, pursuant to R.C. Chapter 3317, and other relevant statutes fails to equalize revenue on a per pupil basis, or to provide an equal educational opportunity to each student in the State or to allocate available funds in a manner which provides for a thorough and efficient system of common schools throughout the State, pursuant to the Constitutional mandate set forth in Article VI, Section 2 of the Ohio Constitution.

COUNT TWO

88. Plaintiff restates and realleges all that is stated and alleged in Paragraphs 1 through 87 of this Complaint and incorporates herein said Paragraphs as if fully restated.

89. The funding of public primary and secondary education in the State of Ohio, pursuant to R.C. Chapter 3317, and other relevant statutes fails to make adequate provisions for the organization, administration and control of the public school system of the state pursuant to the Constitutional mandate set forth in Article VII, Section 2 of the Ohio Constitution.

COUNT THREE

90. Plaintiff restates and realleges all that is stated and alleged in Paragraphs 1 through 89 of this Complaint and incorporates herein said Paragraphs as if fully restated.

91. The funding of public primary and secondary education in the State of Ohio, pursuant to R.C. Chapter 3317, and other relevant statutes fails to provide an equal educational opportunity for all of the students in the state or to fairly equalize expenditures per pupil and therefore fails to provide for the equal protection and benefit of all Ohio Citizens pursuant to the Constitutional mandate set forth in Article I, Section 2 of the Ohio Constitution.

COUNT FOUR

92. Plaintiff restates and realleges all that is stated and alleged in Paragraphs 1 through 91 of this Complaint and incorporates herein said Paragraphs as if fully restated.

93. The funding of public primary and secondary education in the State of Ohio, pursuant to R.C. Chapter 3317, and other relevant statutes does not have a uniform operation throughout the State of Ohio pursuant to the Constitutional mandate set forth in Article II, Section 26 of the Ohio Constitution.

COUNT FIVE

94. Plaintiff restates and realleges all that is stated and alleged in Paragraphs 1 through 93 of this Complaint and incorporates herein said Paragraphs as if fully restated.

95. The Ohio General Assembly enacted several statutes which enables municipal corporations to grant tax exemptions for real and personal property taxes.

96. None of these statutes permit the affected school district to control or be involved in the granting of such tax exemptions.

97. Plaintiff, Dr. Wanda Jean Green, is a resident of the village of Bratenahl, which is within the Cleveland School District but not governed by the legislative authority of the City of Cleveland.

98. The Cleveland City Council has approved numerous exemptions from real property taxes for various commercial and industrial taxpayers within the Cleveland City School District.

99. The effect of these exemptions is to reduce revenue that otherwise would flow to the school district and to shift the burden of taxation to the residential taxpayers.

100. Plaintiff has no representation on Cleveland City Council and the actions of that body have deprived her of the full benefits of the tax levies voted for and approved by the electors in the School District.

101. Tax exemptions granted for economic development reduce the amount of local revenues which the affected school district is able to generate.

102. Such tax exemptions deprive Plaintiff of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

103. Such tax exemptions impact disproportionately upon urban school districts and result in a loss of funds available to urban school districts pursuant to the school foundation program set forth in R.C. Chapter 3317.

COUNT SIX

104. Plaintiff restates and realleges all that is stated and alleged in Paragraphs 1 through 103 of this Complaint and incorporates herein said Paragraphs as if fully restated.

105. Tax exemptions granted for economic development impact unequally throughout the State of Ohio in violation of Article I, Section 2, Article II, Section 26 and Article XII, Section 2 of the Ohio Constitution.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff prays:

1. That this Court declare the State system of funding public primary and secondary education to be void, illegal and in violation of Article VI, Section 2 of the Ohio Constitution.

2. That this Court declare the State system of funding public primary and secondary education to be void, illegal and in violation of Article VII, Section 2 of the Ohio Constitution.

3. That this Court declare the State system of funding public primary and secondary education to be void, illegal and in violation of Article I, Section 2 of the Ohio Constitution.

4. That this Court declare the State system of funding public primary and secondary education to be void, illegal and in violation of Article II, Section 26 of the Ohio Constitution.

5. That this Court declare that tax exemptions for economic development violate Article I, Section 2, Article II, Section 26 and Article XII, Section 2 of the Ohio Constitution.

6. For such other and further relief as this Court deems just and equitable, including such order or decrees as required to compel the State and General Assembly of the State of Ohio to devise and enact a system of school financing that comports with the Constitution of the State of Ohio and to prohibit the State or its agent from interfering directly or indirectly with the conduct of this action.

7. For reasonable attorneys fees.

8. For costs of this action.

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CERTIFICATE OF SERVICE

The foregoing Amended Complaint for Declaratory Judgment, Injunctive Relief and Other Equitable Relief was mailed this 6th day of February, 1991 to Christopher M. Culley, Assistant Attorney General and Patrick A. Devine, Assistant Attorney General, Counsel for all Defendants, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410.

Timothy J. Armstrong

PL\06300112.01C

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED
DEC 30 1991
UTILITIES DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

THE BOARD OF EDUCATION OF
THE CLEVELAND CITY SCHOOL DISTRICT
CUYAHOGA COUNTY, OHIO
1380 EAST SIXTH STREET
CLEVELAND, OHIO 44114

COMPLAINANT,

VS.

CASE NO. 91-2308-EI-CS

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY
P. O. BOX 94661
CLEVELAND, OHIO 44101-4661

RESPONDENT.

COMPLAINT AS TO UNJUST, UNREASONABLE, AND UNJUSTLY DISCRIMINATORY RATES, CHARGES, SCHEDULES, CLASSIFICATIONS, OR SERVICE RENDERED, CHARGED, DEMANDED OR EXACTED, OR PROPOSED TO BE RENDERED, CHARGED, DEMANDED OR EXACTED BY THE CLEVELAND ELECTRIC ILLUMINATING COMPANY.

FIRST CLAIM:

1. The Board of Education of the Cleveland City School District, in Cuyahoga County, Ohio, (the "Complainant") is and has been at all times herein, an electric utility customer of The Cleveland Electric Illuminating Company.

2. The Cleveland Electric Illuminating Company (the "Respondent") is a public utility and is subject to the jurisdiction of this Commission under Sec. 4905.04, 4905.05, and 4905.06, Ohio Revised Code.

BEST COPY AVAILABLE

Ex 2

3. This Complaint is brought by the Complainant pursuant to the provisions of Sec. 4905.26, and 4905.61, Ohio Revised Code.

4. On or about the 12th day of March, 1987 the Complainant passed a formal Board Resolution, No. 134-87, which authorized the Business Chief of the Board to enter into an agreement with Respondent for furnishing electric service to various buildings and sites for a four year term commencing on March 1, 1987 and ending on February 28, 1991, at its then current commercial rates, plus any increase in fuel costs permitted by the Public Utilities Commission of Ohio. A copy of this resolution has been marked Exhibit A, attached hereto, and is incorporated by reference herein.

5. Subsequent to the passage of the above Resolution, and allegedly in compliance therewith, an agreement was executed by a representative of the Complainant and a representative of the Respondent. A copy of that Agreement has been marked as Exhibit B, attached hereto, and is incorporated by reference herein.

6. Despite the fact the Complainant's Resolution only authorized an agreement for electric service "at its current commercial rates, plus any increase in fuel costs permitted by the Public Utilities Commission of Ohio" (PUCO) the Respondent submitted to the Business Chief of the Complainant an agreement which provided that if the PUCO approves a

change in rates in the Large Commercial Schedule during the term of the agreement that the rates to the Complainant shall be adjusted as of the effective date of such change so as to effect the same percentage change in total charges to the Complainant.

7. In the very first bill after the execution of the Agreement, and the passage of the Resolution, the Respondent unilaterally invoked a rate increase on rates charged to the Complainant. Over the balance of the term of the Agreement the Respondent unilaterally invoked other increases in the rates so that the rates as of February 28, 1991 were 39% higher than the rates authorized by the Complainant's Resolution.

8. The Agreement attached hereto was never submitted by the Respondent to the PUCO for its consideration or approval under Sec. 4905.31, Ohio Revised Code. The Agreement was not an agreement for reduced rates or free service to the Complainant under Sec. 4905.34, Ohio Revised Code.

9. The overcharges from March 2, 1987, up to and including February 28, 1991 amount to approximately Two Million Nine Hundred and Seven Thousand & Two Hundred and Thirteen ($2,907,213.00) dollars.

10. The unilateral increases in the rates charged the Complainant were not authorized or approved by the Complainant and were invoked in direct violation of the Complainant's Resolution No. 134-87. The Respondent knew, or should have known, that its unilateral increase in the rates

charged to the Complainant were not authorized by the Resolution adopted by said Complainant. The Respondent also knew, or should have known, that it had no authority to charge rates in excess of that Resolution.

11. The failure of the Respondent to file and submit the subject Agreement to the PUCO for approval, and to actually obtain the approval of the PUCO, was a violation of Sec. 4905.31 (E), Ohio Revised Code.

12. The failure to conform the agreement, and the rates charged thereunder to the said Resolution was also a violation of Sec. 4905.31 (E), Ohio Revised Code.

13. The unilateral increases in the rates charged to the Complainant, in direct violation of the rates approved by the Complainant's Resolution No. 134-87 and was a series of acts prohibited by Chapters 4901, 4903, 4905, and 4909 of the Ohio Revised Code.

SECOND CLAIM;

14. The Complainant hereby incorporates by reference all of the allegations in paragraphs 1 through 13 as if fully rewritten herein.

15. The Respondent has submitted to the Complainants a new proposed agreement for the supply of electricity to the schools and buildings of the Complainant for the period from March 1, 1991 through February 28, 1995. A copy of that Agreement has been marked as Exhibit C, attached hereto, and incorporated by reference herein.

16. The Respondent does not have any filed tariff rates

applicable to a customer class such as the Complainant herein. The Complainant is not an industrial, commercial, or residential class customer.

17. The rates proposed by the Respondent are not rates that have been approved by the PUCO and are not fair, just and reasonable rates.

18. The Respondent proposes to index the Complainant's rates to the Large Commercial Schedule during the term of the Agreement. The Large Commercial Schedules contain a component for demand charges and the Complainant's school buildings do not even have demand meters.

19. The school buildings have a significantly lower coincident peak demand than the Large Commercial class of customers. The school buildings, numbering approximately 170 in the Cleveland School District, should have their own separate rates based upon the quantity used, the time when used, the purpose for which used, the duration of use and any other reasonable considerations.

WHEREFORE, the Complainant prays that this Commission Order that:

(A) On the First Claim that Respondent has done, or caused to be done, acts or things prohibited by Chapters 4901, 4903, 4905, and 4909 of the Ohio Revised Code and Respondent is therefore liable to the Complainant in treble the amount of damages sustained in consequence of such violation, failure or omission, pursuant to

Sec. 4905.61, Ohio Revised Code.

(B) On the Second Claim that the Respondent's proposed new Agreement for electric rates and service is not fair, just and reasonable and that the Commission should conduct an investigation of the proposal as it would under Sec. 4909.15 (D), 4909.18, and 4909.19, Ohio Revised Code. Upon completion of said investigation that the Commission set the matter for public hearing and give notice as provided for in Sec. 4909.18, Ohio Revised Code. Upon completion of the said hearing that the Commission then fix and determine the fair, just and reasonable rates for the provision of electric service by the Respondent to this Complainant.

RESPECTFULLY SUBMITTED,

THOMAS C. SIMIELE
GENERAL COUNSEL
The Board of Education of
The Cleveland City School
District, Cuyahoga County,
Ohio.

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